

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR08-1513

ANTHONY COLLINS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered June 17, 2009

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. CR-2006-1047-1, CR-2006-0134-1,
CR-2005-0900-1]

HONORABLE BERLIN C. JONES,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Anthony Collins appeals from the judgment and commitment order entered by the Jefferson County Circuit Court revoking his drug-court probation in three separate cases. On appeal, Collins contends that there was insufficient evidence supporting the trial court's finding that he inexcusably violated the terms and conditions of his probation. He also contends that the sentence imposed by the trial court was illegal. We affirm.

In September 2005, Collins was charged with one count of theft of property and four counts of forgery in case number CR 2005-900. Thereafter, in February 2006, Collins was charged with theft of property and six counts of forgery in case number CR 2006-134. On August 30, 2006, a judgment and commitment order was entered reflecting that Collins pled guilty to all crimes comprising case numbers CR 2005-900 and CR 2006-134. He was

sentenced to a total of sixty months' probation and ordered to pay a fine, court costs, restitution, and fees. Collins was also ordered to participate in drug treatment and perform community service.

In November 2006, Collins was charged with one count of theft of property and four counts of fraudulent use of a credit card in case number CR 2006-1047. Thereafter, in March 2007, the State filed a petition to revoke Collins's probation in case numbers CR 2005-900 and CR 2006-134. Collins pled guilty to the allegations that he violated his probation in CR 2005-900 and CR 2006-134 and to the charges alleged in case number CR 2006-1047, and on April 18, 2007, a judgment and commitment order was filed, sentencing Collins to a total of forty-eight months' drug-court probation. He was also ordered to pay a fine, court costs, restitution, and fees, and participate in drug treatment, perform community service, and tour the Arkansas Department of Correction.

On April 25, 2007, the State filed a petition to revoke his drug-court probation in CR 2005-900, CR 2006-134, and CR 2006-1047. The petition alleged that Collins failed to attend drug testing on April 20, appear for drug-court review on April 25, report for group counseling and classes, participate in the drug program, complete his community-service hours, tour the Arkansas Department of Correction, and make payments toward his financial obligations.

At the revocation hearing, Collins's probation officer Angela Jones testified that when Collins was first placed on drug-court probation, he was advised of and signed the documents outlining the terms and conditions of probation. According to Jones, after completing the

intake process for drug court on April 17, 2007, Collins did not report as directed. He did not attend drug testing, classes, or counseling. She said that he did not complete his community service, did not tour the Arkansas Department of Correction, and did not pay any of his monetary obligations.

On cross examination, Jones stated that after Collins completed the drug-court-intake process on April 17, 2007, the next contact he made was a phone call to the probation office on April 30, 2007, stating that he had “messed up” by getting into an argument with his girlfriend and “went out and used meth.” Collins reported that he was staying with a friend in Morrilton and wanted to turn himself in. The only other contact Collins made was on May 21, 2007, when he left a voice-mail message (from an anonymous number), stating that he was still “in Morrilton and [felt] really bad that he [had not] turned himself in. [Collins] stated . . . that he would be turning himself in on Monday.” Collins never turned himself in.

Jefferson County Drug Court Counselor Latonya Taggart also testified. She stated that in April 2007, Collins reported that he was living in Morrilton with his girlfriend. She did not recall Collins reporting housing problems to her; however, she did recall that Collins reported that he had used “meth.”

Collins also testified at the revocation hearing. He said that at the time he began the drug-court program, he planned to live with his uncle. However, because his uncle was still engaged in drug activity, in which Collins refused to participate, his uncle asked Collins to live elsewhere. He tried to reconcile with his wife; however, after an argument with her, she asked him to leave. He stayed in his girlfriend’s car for a couple of nights and then with a

friend in Monticello. Collins admitted that he began using drugs again while staying with his friend. He stated that the drugs “played tricks on his mind,” causing him not to take the right actions, like turning himself into authorities and finding transportation back to drug court.

Collins further testified that for the past five months he had been living in a detention center and had turned his life around. He asked the court for a second chance to participate in the drug-court program. Collins’s wife testified that she and Collins had recently reconciled. She stated that she would support him if he was permitted to participate in the drug-court program. She testified that since December 2007 (when he was arrested and placed into custody), her husband had changed.

The trial court revoked Collins’s probation in CR 2005-900, CR 2006-134, and CR 2006-1047. A judgment and commitment order was entered on April 4, 2008, sentencing Collins to a total of fifteen years’ imprisonment. Collins has timely appealed from this order. He first argues that there was insufficient evidence to support the trial court’s finding that he inexcusably violated the terms and conditions of his drug-court probation.

In order to revoke probation, the trial court must find by a preponderance of the evidence that the defendant inexcusably violated a condition of that probation. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). The State bears the burden of proof, but need only prove that the defendant committed one violation of the conditions. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004). Once the State introduces evidence of non-compliance in a revocation hearing, the defendant then bears the burden of going forward with some reasonable excuse for non-compliance. *Anglin v. State*, 98 Ark. App. 34,

249 S.W.3d 836 (2007). On appeal, we do not reverse a trial court's findings unless they are clearly against the preponderance of the evidence. *Sisk v. State*, 81 Ark. App. 276, 101 S.W.3d 248 (2003).

There was overwhelming evidence presented at the hearing that Collins committed many violations of his probation. He failed to report to drug court; submit to drug testing; attend counseling, classes, and group sessions; tour the prison; perform community service; and make any payments of restitution, costs, and fees. Collins conceded many of these violations and does not dispute the findings of the trial court on this point. Rather, he contends that his homelessness and lack of transportation were "reasonable excuse[s] for his technical violation." We disagree.

According to the testimony of Collins's probation officer and drug-court counselor, Collins never reported that he was homeless or lacked transportation. He did, however, report to them that he was using drugs. At the revocation hearing, the only excuse he offered for ignoring all of his drug-court responsibilities was drug intoxication. Voluntary illegal drug intoxication is not a reasonable excuse for failing to comply with drug-court-probation requirements. Accordingly, we hold that sufficient evidence supports the trial court's findings that Collins inexcusably violated the terms and conditions of his drug-court probation.

Collins devoted most of his testimony to his belief that, because he was in custody the past five months, he had turned his life around. The trial court questioned Collins's credibility concerning his professed "jailhouse conversion," stating that Collins had several chances previously to turn his life around but did not claim to have done it until he was in

custody. We defer to the superior position of the trial judge to pass upon the credibility of witnesses. *Burroughs v. State*, 96 Ark. App. 289, 241 S.W.3d 280 (2006). And we are not at liberty to disturb credibility determinations on appeal. *Gonder v. State*, 95 Ark. App. 144, 234 S.W.3d 887 (2006).

For his second point, Collins argues that the trial court imposed an illegal sentence. He does not question the legality of the April 4, 2008 judgment and commitment order. Rather, he questions the legality of the judgment and commitment order entered on April 18, 2007, because it reflected that Collins pled guilty to four more class-C-felony counts than he agreed to in the Report of Plea Negotiations, also filed April 18, 2007. Due to this discrepancy, Collins argues that the sentence imposed was illegal and should be reversed and remanded.

We cannot reach Collins's argument because it is untimely. The timely filing of a notice of appeal is a jurisdictional requirement. *Timmons v. State*, 81 Ark. App. 219, 100 S.W.3d 52 (2003). Following the entry of the April 18, 2007 judgment and commitment order, Collins did not file a notice of appeal as required under Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Criminal. Collins did not file a post-trial motion challenging the legality of the sentence imposed in the April 18, 2007 judgment and commitment order. *Timmons, supra* (citing *J.C.S. v. State*, 336 Ark. 364, 985 S.W.2d 312 (1999) (finding that the challenge to a sentence was barred when no notice of appeal or post-trial motion was made raising or preserving the challenge); *Brimer v. State*, 301 Ark. 540, 785 S.W.2d 458 (1990) (finding that the failure to appeal an earlier order precluded challenging a restitution

amount in a later revocation proceeding)). We therefore hold that Collins failed to file a timely appeal of the April 18, 2007 order, precluding our review of this issue.

Affirmed.

KINARD and BROWN, JJ., agree.